IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.328 of 2000.

Date of decision: September 18, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Surat Ram. ……. Respondent.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondent: Mr. N.S. Shandil, Advocate.

Surinder Singh, J (oral):

Heard and gone through the record.

The respondent herein was put on trial under Section 33 of the Indian Forest Act before the Judicial Magistrate, Rohroo, for allegedly felling of five trees from the protected forest compartment No.47-C. He was convicted and sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for a further period of one month.

The respondent assailed his conviction in appeal before the learned Sessions Judge, Shimla which was set-aside, consequently, the respondent was acquitted.

The judgment of acquittal passed by the learned Sessions Judge has been questioned, on the ground that the lower appellate court did not appreciate the evidence on record, in the right perspective and had set unrealistic standards to evaluate the direct and cogent evidence of the

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

prosecution. The reasoning recorded for acquittal is manifestly unreasonable, therefore, prayed for the restoration of the conviction and sentence, passed by the Judicial Magistrate.

The factual matrix of the instant case is that the Forest Range Officer was informed by Surat Ram, Forest Guard, Summerkot, in writing, on 2.10.1994 that on the previous day, i.e. on 1.10.1994, when he was in village Nasari, he was informed that illicit felling and conversion of trees was in progress, in compartment No.47-C. On this, he along with Roop Singh, Muni Lal, Mahender Singh, Gian Singh, Surender Singh and Surjit Singh proceeded to the spot in the wee hours of the morning and found that four Kashmiris and four Gorkha labourers in forest. On seeing them, they ran away from the spot and a local man informed him that the respondent who was son of Mathu Ram, resident of village Sharmali was also with them, who had exhorted the Kashmiris and Gorkha labourers to flee away. Said labourers had left behind the **Farnai** and a Saw. On this information, the Range Officer aforesaid, sent a report to the Station House Officer concerned on the same day, on the basis of which FIR was registered on 3.10.1994. **Farnai** and Saw were taken into possession by the police along with 13 sleepers. The spot was shown to the Patwari and the revenue papers were collected and after completion of the investigation, the case was presented in the court for trial.

The Judicial Magistrate had convicted and sentenced the respondent, as aforesaid, which was set-aside by the first appellate court, on the ground that the prosecution story is highly doubtful, because, the man, who was said to have been seen in the company of the Gorkahas and Kashmiris, was Surat Ram, son of Mathu Ram, as per report Ext.PW12/A and the same information was passed on by the Range Officer to the police, but the name of the father of the respondent is not Mathu Ram, but was Tirath Ram, as revealed in the police papers and this ambiguity was not explained at all.

Secondly, the presence of the respondent on the spot was highly doubtful, because some of the witnesses have stated that on seeing the

Forest Guard and local people, he along with the labourers fled away, but other set of witnesses have stated that he was loading the sleepers with the help of Gorkhas, who were engaged in the carriage of the sleepers from the forest to the road-head and some others say that nobody was engaged for the carriage of the sleepers and only the other labourers were present, who were holding the **Farnai** and a Saw to convert the felled trees into sleepers. Few of them also stated that nobody was there when the party of the Forest Guard and the local people were seen.

So, in view of the above contradictions, infirmities and inconsistency, the appellate court did not believe the prosecution case, thus, set-aside the impugned judgment of conviction and sentence.

Upon hearing the learned counsel for the parties, I have also re-appraised and scanned the evidence of the prosecution, coupled with the statement of the respondent under Section 313 of the Code of Criminal Procedure. The respondent had also taken the risk of examining himself as his own witness, under Section 315 of the Code of Criminal Procedure and subjected himself to the cross-examination by the prosecution.

After going through the entire evidence on record, I have also found the aforesaid infirmities and contradictions, as pointed out by the first appellate court, in detail, in its judgment, on the basis of which the conviction of the respondent was set-aside make the case of prosecution quite doubtful. In addition, I have also found that the prosecution did not bother to produce and prove the notification under Section 29 of the Indian Forest Act of the alleged place where the trees of Deodar were allegedly felled that it is a part of the protected forest which is *sine qua non* to prove the guilt of the respondent under Section 33 of the Act. The prosecution has only banked upon the oral testimony of the witnesses that the area in question fell in protected forest this cannot be relied upon. Therefore, for the above reasons, no fault can be found in the impugned judgment of acquittal passed by the first appellate court. Accordingly, it is upheld and consequently, the appeal is dismissed.

The respondent is discharged of his bail bond entered upon by him at any stage during these proceedings.

September 18th, 2007. **(Surinder Singh)**
(PDS) **Judge**.